

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

Richard Allen Smuda,)
Petitioner,) Case No. 3:09-cv-114
-vs-)
State of North Dakota,) **ORDER ADOPTING REPORT AND
RECOMMENDATIONS**
Respondent.)

Richard Allen Smuda filed a petition for habeas relief pursuant to 28 U.S.C. § 2254 (Doc. #1). The Court has received a Report and Recommendation from the Honorable Karen K. Klein, United States Magistrate Judge, pursuant to 28 U.S.C. § 636, recommending Smuda's petition be dismissed with prejudice and a certificate of appealability not be issued. Smuda has submitted a letter explaining his different convictions and civil commitment (Doc. #11).

The Court has reviewed the Report and Recommendation and Smuda's letter, along with the entire file, and agrees with the Magistrate Judge's analysis and recommendations. Accordingly, the Court hereby adopts the Report and Recommendation in its entirety. For the reasons set forth therein, Smuda's petition for habeas relief under 28 U.S.C. § 2254 is hereby **DISMISSED** with prejudice. Further, the Court finds that any appeal would be frivolous, could not be taken in good faith, and may not be taken in forma pauperis. Moreover, based upon the entire record before the Court, dismissal of the petition is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings. Therefore, a certificate of appealability will not be issued by this Court. See Tiedeman v. Benson, 122 F.3d 518, 522 (8th Cir. 1997) (finding that district courts possess the authority to issue certificates of appealability under Section 2253(c)). If the petitioner desires further review of his petition, he

may request the issuance of a certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals in accordance with Tiedeman v. Benson, 122 F.3d 518, 250-252 (8th Cir. 1997).

IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 20th day of April, 2010.

/s/ Ralph R. Erickson
Ralph R. Erickson, Chief Judge
United States District Court